

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas Holman
Bankruptcy Judge
Modesto, California

January 6, 2004 at 1:30 p.m.

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| 1. | 01-90501-A-13 RAFAEL ORDAZ, SR. &
SJM #2 MARIA ORDAZ
CALIFORNIA HOUSING AGENCY VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/1/03 [33] |
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Tentative Ruling: The motion for relief from the automatic stay is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

The motion is denied because the movant provided notice to the debtors at the wrong address. The Proof of Service lists a wrong zip code.

The court notes the movant listed a date in 2003 as the hearing date as well.

The court will issue a minute order.

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| 2. | 03-90102-A-13 RICHARD & WILBERTA BLESSING
PSP #1
ALLIANCE CREDIT UNION VS. | CONT. HEARING ON RESTORED
MOTION FOR RELIEF FROM
AUTOMATIC STAY
7/10/03 [14] |
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Disposition Without Oral Argument: This motion for relief from the automatic stay is restored to calendar pursuant to the terms of the court's August 11, 2003, order of adequate protection. The failure of the debtors, the trustee, and all other parties in interest to file timely written opposition as required by that order is considered consent to the granting of the motion. Therefore, the matter is resolved without oral argument.

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually

billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

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| 3. | 01-93604-A-13 MICHAEL ANTHONY HOPKINS
LDC #1
CALIFORNIA DEPARTMENT OF
VETERANS AFFAIRS VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
11/17/03 [61] |
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Tentative Ruling: The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with, inter alia: LBR 4001-1(c) (requiring the form Relief from Stay Information Sheet to be fully completed, including the equity analysis in Section 5); LBR 4001-1(d)(1)(i) (requiring a verified payment history containing specific information); LBR 4001-1(d)(1)(ii) (regarding necessary pre-filing communication by the movant); and LBR 9014-1(d)(3) (requiring, inter alia, that the notice of hearing state whether written opposition to the motion is required, and if so, on whom and where opposition must be served).

A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

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| 4. | 03-91406-A-13 JEFFREY & MICHELLE DUNN
DRW #1
NEW CENTURY MORTGAGE CORP. VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/19/03 |
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Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

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| 5. | 01-90312-A-13 DONTIE & JOANNE SAWYER
KK #1
GREEN TREE SERVICING VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/9/03 [15] |
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

6.	02-90721-A-13 YSIDORE & LAURENE MARTINEZ RLE #2 DAIMLERCHRYSLER SERVICES VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/09/03 [37]
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Tentative Ruling: The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim, all in accordance with applicable non-bankruptcy law.

The debtors' opposition is unavailing. The docket shows that the debtors are not making regular plan payments (the debtors modified a plan on November 19, 2003, to, *inter alia*, suspend plan payments through September 2003). In addition, the Trustee notice of default filed on December 4, 2003, alleges that the debtors are \$1,350 delinquent in plan payments, which is a greater delinquency than the debtors state they will cure in their December 23, 2003 opposition.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

7. 03-92522-A-13 BARTOLO & REGINA VIDAURE
AJH #1
COUNTRYWIDE HOME LOANS, INC. VS.

CONT. HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
TO PERMIT FORECLOSURE UPON
AND SALE OF REAL PROPERTY
10/2/03 [24]

Tentative Ruling: This matter was continued twice - once from November 4, 2003, and then from November 18, 2003 - both times at the request of the parties. No new documents having been filed in this matter, this court reissues its prior ruling:

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

The debtors' opposition is unpersuasive. They claim to have paid more than the amount due. They attach copies of four money order receipts (totaling \$1600) and one cashier's check (the amount is illegible). These copies do not prove payment to Countrywide.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed. These fees may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

8. 03-92522-A-13 BARTOLO & REGINA VIDAURE
CWP #2

HEARING ON MOTION TO
CONFIRM DEBTORS' SECOND
AMENDED CHAPTER 13 PLAN
11/26/03 [47]

Tentative Ruling: No written opposition to this matter was filed, so it would be suitable for disposition without hearing. In this instance, however, the court issues a tentative ruling.

The motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

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| 9. | 03-90025-A-13 ALLAN & DENNILYN RAMILO
DRW #1
FIRST FRANKLIN FINANCIAL CORP. VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/12/03 [42] |
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Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

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| 10. | 03-92625-A-13 WILLIAM R. SPEED
MPD #1
CRESLEIGH FINANCIAL SERVICES VS. | HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/8/03 [14] |
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

11. 03-90428-A-13 ANTHONY & RENEE RUSSELL
MB #1
COUNTRYWIDE HOME LOANS,
INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/1/03 [28]

Tentative Ruling: The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

The debtors' opposition is unpersuasive. The docket shows a strong history of post-petition default since the case was filed on February 3, 2003. Specifically, the debtors confirmed a modified plan on December 16, 2003 which suspended plan arrears through October and post-petition mortgage arrears for September and October. In their opposition, the debtors conceded they have not made any mortgage payments under the new modified plan where they state, "We are now due for the months of November, December and January will be due at the time of the hearing." Furthermore, the debtors have provided no evidence of how they can begin making timely payments and cure the delinquent ones.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

12. 98-93431-A-13 RALPH BRADLEY KEITH
MB #1
WASHINGTON MUTUAL BANK VS.

HEARING ON RESTORED
MOTION FOR RELIEF FROM THE
AUTOMATIC STAY
3/19/01 [96]

Tentative Ruling: The motion is denied.

Neither the plan nor the order confirming the plan having provided otherwise, the property of the estate reverted in the debtor on confirmation. 11 U.S.C. § 1327(b). That being the case, the automatic stay ended, by operation of law, as to the estate's interest in the property on confirmation. 11 U.S.C. § 362(c)(1).

The docket shows the trustee filed his final accounting on November 21, 2003, and no party filed an objection to that report. Accordingly, the debtor will be receiving a discharge and this case will be closed within days of this hearing. The automatic stay, as it pertains to the debtor,

will come to an end, by operation of law, when the debtor receives his discharge. 11 U.S.C. § 362(c) (2).

The conflicting evidence supplied by the parties would have required an evidentiary hearing to resolve. There is no reason to hold an evidentiary hearing to resolve whether the movant should be granted relief from the automatic stay when the stay will end by operation of law in the immediate future.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Counsel for the movant shall submit an order that conforms to the court's ruling.

13.	01-90932-A-13 LILLIE RUTH EARNEST PE #1 A.L. FINANCIAL VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/9/03 [53]
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Tentative Ruling: The motion is granted to the extent set forth below.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d) (1) and (d) (2) to permit the movant to repossess the vehicle, dispose of it pursuant to applicable law, and use the proceeds from its disposition to satisfy its claim.

The debtor's opposition is unavailing. The debtor did not provide evidence of insurance on the vehicle.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed.R.Bankr.P. 4001(a) (3) is waived.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order that conforms to the court's ruling.

14.	00-92135-A-13 AMELIA MARTINEZ JDC #1 SCHOOLS FINANCIAL CREDIT UNION VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/2/03 [39]
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Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with, inter alia: LBR 4001-1(d) (2) (regarding

necessary pre-filing communication by the movant for claims paid through the plan). The court notes the debtor's exhibit, a print-out from the trustee's web page, shows the creditor's claim has been paid. Should the creditor intend to re-file this motion, it should especially comply with the local rules regarding pre-filing communication with the trustee's office (LBR 9014-1(d)(2)), and review the treatment of its claim in the debtor's confirmed plan.

Creditor's reliance on missed contractual payments is misplaced. The debtor has confirmed a plan. The confirmed plan binds the creditor. 11 U.S.C. § 1327(a). After confirmation, the only ground for relief from the automatic stay is a breach of the confirmed plan. In re Evans, 30 B.R. 530 (9th Cir. B.A.P. 1983).

A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court will issue a minute order.

15.	02-94535-A-13 DONALD G. WEBER MB #1 COUNTRYWIDE HOME LOANS, INC. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/1/03 [21]
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Tentative Ruling: The motion is granted to the extent set forth below.

The automatic stay, as it applies to the subject collateral, is modified, effective February 6, 2004, at 12:01 a.m., in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

The delay in the termination of the automatic stay is to allow the debtor an opportunity to complete the sale set forth in the opposition.

Movant shall serve a copy of the order granting relief on the holders of all junior liens, if any.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. Termination of the automatic stay is effective under the terms set forth above.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Counsel for movant shall submit an order that conforms to the court's ruling.

16.	02-94535-A-13 DONALD G. WEBER FW #2	HEARING ON MOTION TO SELL REAL PROPERTY 12/3/03 [28]
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Disposition Without Oral Argument: No written opposition to this matter

was filed, so it is therefore suitable for disposition without hearing.

The motion to sell the real property known as 3170 Andre Lane in Turlock, California is granted, subject to the conditions in the motion. In the absence of any opposition, the court finds the sale is consistent with the debtor's performance of the confirmed plan.

The stay of Bankruptcy Rule 6004(g) is ordered waived.

Counsel for debtor shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

17.	03-91936-A-13 ALFRED R. GARGANTILLA MJN #1 HOUSEHOLD MORTGAGE SERVICES VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/10/03 [29]
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Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this matter.

The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, LBR 9014-1(d)(3) (requiring, inter alia, that the notice of hearing state whether written opposition to the motion is required, and if so, on whom and where opposition must be served).

A copy of the current local rules of this court is available on the internet, free of charge, at <http://www.caeb.uscourts.gov>.

The court notes that on December 19, 2003, the debtor converted this case to chapter 7. If the motion is re-filed, the new case trustee must be served.

The court will issue a minute order.

18.	02-91539-A-13 STEVE & SHEILA HERRERA DN #1	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF THE INTERNAL REVENUE SERVICE FILED AUGUST 29, 2002 FOR \$6,738.00 11/13/03 [14]
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Tentative Ruling: The objection is overruled as moot.

The claim to which the debtors objected was amended by claim No. 11 on ECF. Claim No. 11 was filed by the Internal Revenue Service on November 26, 2003, as a priority claim for \$932.23 (\$931.00 in income tax for 2001 - the same amount the debtors concede they owe - and \$1.23 in interest), plus a non-priority claim for \$4.66 (penalty and interest) .

Counsel for the debtors shall submit an order that conforms to the court's ruling.

19. 02-91539-A-13 STEVE & SHEILA HERRERA HEARING ON MOTION FOR
RGH #1 RELIEF FROM AUTOMATIC STAY
THE BANK OF NEW YORK VS. 12/19/03

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

20. 03-92644-A-13 GEORGE & ANNETTE ANDERSON HEARING ON MOTION FOR
SJM #1 RELIEF FROM AUTOMATIC STAY
CHASE MANHATTAN VS. 12/11/03 [72]

Disposition Without Oral Argument: This matter was withdrawn by movant on January 5, 2004, and is removed from the calendar.

21. 03-92644-A-13 GEORGE & ANNETTE ANDERSON HEARING ON MOTION FOR
PE #1 RELIEF FROM AUTOMATIC STAY
A.L. FINANCIAL VS. 12/10/03 [67]

Tentative Ruling: Relief from the automatic stay is denied, and fees are granted.

Relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) is denied because the evidence establishes the debtors are not delinquent under the terms of the confirmed plan, and there is equity in the subject property.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Counsel for the movant shall submit an order that conforms to the court's ruling.

22. 01-91348-A-13 RUSSELL & CARMEN BAUGH HEARING ON RESTORED
MB #1 MOTION FOR RELIEF FROM STAY
OCWEN FEDERAL BANK VS. 10/7/02 [28]

CASE DISMISSED EOD 11/26/03

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed November 26, 2003.

The court will issue a minute order.

23. 01-94151-A-13 PAUL PLACENCIA, SR. & HEARING ON MOTION FOR
MB #1 PATSY PLACENCIA RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS, 11/26/03 [29]
INC. VS.

Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) pay the January 2004 and all future mortgage payments within the grace period, if any, (2) become completely post-petition current in mortgage payments, including any associated late fees, by direct post-petition payments by January 20, 2004, and (3) pay the January 2004 chapter 13 plan payment to the trustee in a timely manner.

If the debtors fail to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtors' counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtor, debtors' counsel, the chapter 13 trustee and the holders of all junior liens, if any.

The request for attorney fees is granted. The movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. However, if relief from the automatic stay is granted, the movant may enforce any unpaid portion of the fee award only against the movant's collateral.

Counsel for the movant shall submit an order that conforms to the court's ruling.

24. 02-91551-A-13 ELLISE CRUZ HEARING ON RESTORED
SJM #1 MOTION FOR RELIEF FROM
CITIFINANCIAL MORTGAGE CO., INC. VS. AUTOMATIC STAY
7/24/02 [23]

Tentative Ruling: This motion for relief from the automatic stay is restored to calendar pursuant to the terms of the court's February 3, 2003, order of adequate protection.

The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtor (1) pays the January 2004 and all future mortgage payments within the grace period, if any, (2) becomes completely post-petition current in mortgage payments, including any associated late fees, by direct post-petition payments by January 20, 2004, and (3) pays the January 2004 chapter 13 plan payment to the trustee in a timely manner.

If the debtor fails to do any of the foregoing, the court will grant relief from stay based on the declaration of a competent witness. Any declaration of default and proposed order shall be served by facsimile on the debtor's counsel three court days before submission to the court, and the transmittal to the court shall include proof of such service. The only relevant opposition to the creditor's declaration of default will consist of a showing that the claimed default did not occur. Any order granting relief shall be served on the debtor, debtor's counsel, the chapter 13 trustee and the holders of all junior liens, if any.

The request for attorney fees is granted. The movant may amend its claim to add attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. However, if relief from the automatic stay is granted, the movant may enforce any unpaid portion of the fee award only against the movant's collateral.

Counsel for the movant shall submit an order that conforms to the court's ruling.

25.	02-93751-A-13 FIDEL & APRIL RUBIO RLE #3 DAIMLERCHRYSLER SERVICES NORTH AMERICA VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/9/03 [78]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim, all in accordance with applicable non-bankruptcy law.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

Because the movant has not established that it is the holder of an allowed secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

26.	00-92064-A-13 RICHARD YOUNG MOTEN, JR. MPD #3 EMC MORTGAGE CORP. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/8/03 [60]
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Disposition Without Oral Argument: This motion for relief from the

automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

27.	03-91965-A-13 LARRY & MARIA LAYOG MKO #1 VALLEY CREDIT UNION VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/11/03 [38]
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Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

28.	03-91976-A-13 LINDA D. CARDENAS MET #1 AMERICAN HONDA FINANCE CORP. VS.	HEARING ON MOTION FOR TERMINATION OF AUTOMATIC STAY, OR ALTERNATIVELY, FOR ADEQUATE PROTECTION 12/8/03 [32]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit

the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim, all in accordance with applicable non-bankruptcy law.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

Because the movant has not established that it is the holder of an allowed secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

29.	03-94177-A-13 SCOTT & MARCIA GALBRAITH SW #1 WELLS FARGO FINANCIAL ACCEPTANCE VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/3/03 [20]
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Tentative Ruling: The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(2) to permit the movant or the insurer to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim, all in accordance with applicable non-bankruptcy law.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

30.	03-94177-A-13 SCOTT & MARCIA GALBRAITH SW #2	HEARING ON OBJECTION TO CONFIRMATION OF PLAN FILED BY WELLS FARGO FINANCIAL ACCEPTANCE 12/3/03 [26]
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Disposition Without Oral Argument: This matter was withdrawn by movant on January 5, 2004 and is removed from the calendar.

31. 03-92278-A-13 ROBERT & JAYMA VAUGHAN HEARING ON MOTION FOR
MB #1 RELIEF FROM AUTOMATIC STAY
COUNTRYWIDE HOME LOANS, 12/1/03 [43]
INC. VS.

Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) pay the January 2004 mortgage payment, so that it is received by movant within the grace period, if any, (2) become completely post-petition current in mortgage payments, including any associated late fees, through post-petition payments within the grace period for the January 2004 mortgage payment, if any, and (3) pay the January 2004 chapter 13 plan payment to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments from February 1, 2004 through July 31, 2004.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

32. 03-93880-A-13 VICTOR & LAURIE ACEVEDO HEARING ON MOTION FOR
DMG #1 RELIEF FROM AUTOMATIC STAY
AMERICREDIT FINANCIAL 12/8/03 [20]
SERVICES, INC. VS.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

33. 03-94484-A-13 DALE J. ALTON, SR. HEARING ON MOTION FOR
DMG #1 RELIEF FROM AUTOMATIC STAY
DAIMLERCHRYSLER SERVICES 12/8/03 [12]
NORTH AMERICA VS.

Tentative Ruling: The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy

its claim, all in accordance with applicable non-bankruptcy law.

The debtor's opposition is unavailing. There is insufficient evidence to show that movant's interest in the subject vehicle is insured.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

34.	01-91787-A-13	TEODORO LOZANO, JR. &	HEARING ON MOTION FOR
	MPD #2	JULIA LOZANO	RELIEF FROM AUTOMATIC STAY
	WASHINGTON MUTUAL BANK VS.		12/8/03 [38]

Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) pay the January 2004 mortgage payment within the grace period, if any, (2) become completely post-petition current in mortgage payments, including any associated late fees, through post-petition payments by January 30, 2004, and (3) pay the January 2004 chapter 13 plan payment to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments from February 1, 2004 through July 31, 2004.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

35.	03-91789-A-13	KIMBILIN & NAYKA PHILLIPS	HEARING ON MOTION FOR
	SML #1		RELIEF FROM AUTOMATIC STAY
	WASHINGTON MUTUAL BANK, FA VS.		OR IN THE ALTERNATIVE, FOR
			ADEQUATE PROTECTION
			12/5/03 [24]

Disposition Without Oral Argument: This motion was resolved, by court-

approved stipulation, on January 5, 2004. This matter is removed from calendar.

36.	03-90491-A-13 ABBAS & ADLA MANSOUR ASW #1 GUARANTY BANK VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/1/03 [24]
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Tentative Ruling: The motion is granted in part; adequate protection is ordered as set forth below.

Continuation of the automatic stay is conditioned as follows: The automatic stay shall remain in effect if the debtors (1) pay the January 2004 mortgage payment within the grace period, if any, (2) become completely post-petition current in mortgage payments, including any associated late fees, within the grace period for the January 2004 mortgage payment, if any, and (3) pay the January 2004 chapter 13 plan payment to the trustee in a timely manner.

Further adequate protection is ordered as follows: This motion may be restored to calendar not more than once should the debtors default in post-petition mortgage payments from February 1, 2004 through July 31, 2004.

The request for attorney fees is granted. Costs of \$150 are also awarded.

Except as so ordered, the motion is denied.

Counsel for the movant shall submit an order on EDC Form 3-205, the additional terms of which are hereby incorporated in the ruling. An interactive version of the Form is available on the Court's website. No alterations of or addition to EDC Form 3-205 shall be made unless specifically stated in the ruling.

37.	03-93492-A-13 MANJINDER & CHARANJIT KLK #2 DHALIWAL BANK OF STOCKTON VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/10/03 [29]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted to the extent set forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim, all in accordance with applicable non-bankruptcy law.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

38. 01-94593-A-13 BRIAN DEAN CASTEEL
MB #1
WASHINGTON MUTUAL HOME LOANS,
INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/8/03 [53]

Tentative Ruling: The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

The debtor's opposition is unpersuasive. The debtor seeks to have the court deny the movant relief from the automatic stay because he also seeks to modify a plan to cure the alleged arrears (matter No. 39). The docket shows the debtor has modified his plan twice before to cure post-petition delinquencies in plan and direct mortgage payments. Furthermore, as shown in matter No. 39, the debtor's plan is not confirmable as proposed. There is simply no evidence, in either the defective plan, the motion supporting it, the opposition to this motion, or the court's docket, of the debtor's ability to make on-going payments to this creditor and the trustee, and in fact, his consistent need to modify his plan to suspend arrears is evidence to that he cannot make the required payments. Furthermore, there is no evidence of a sufficient equity cushion in this property which can adequately protect this creditor while the debtor would reasonably cure his complied arrears.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

39. 01-94593-A-13 BRIAN DEAN CASTEEL
FW #3

HEARING ON MOTION TO
MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
11/19/03 [49]

Tentative Ruling: The trustee's objections sustained, and the motion to confirm is denied.

The debtor failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

40. 03-94598-A-13 PEGGY M. MOORE
DMG #2
AMERICREDIT FINANCIAL SERVICES, INC.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
12/11/03 [9]

Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim, all in accordance with applicable non-bankruptcy law.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

41. 02-94599-A-13 BERTHA LEE MCBRIDE
SML #1
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC. VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
OR IN THE ALTERNATIVE, FOR
ADEQUATE PROTECTION
12/5/03 [16]

Disposition Without Oral Argument: This motion for relief from the

automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

42.	03-92199-A-13 BENJAMIN A. MARTINEZ SJM #1 ABN AMRO MORTGAGE	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/11/03 [16]
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Disposition Without Oral Argument: This motion for relief from the automatic stay has been filed pursuant to LBR 4001-1 and LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted to the extent sent forth herein.

The automatic stay is modified pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to foreclose and to obtain possession of the subject real property following the sale, all in accordance with applicable non-bankruptcy law.

Movant shall serve a copy of the order granting relief on the holders of all junior liens.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived.

Because the value of the collateral exceeds movant's claim, movant is awarded attorneys fees equal to the lesser of \$675 or the amount actually billed, plus costs of \$150. These fees and costs may be enforced only against the movant's collateral.

Except as so ordered, the motion is denied.

Counsel for movant shall submit an order that conforms to the court's ruling.

43. 03-94732-A-13 GREGORY R. SMITH

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL,
CONVERSION OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTOR AND/OR DEBTOR'S
ATTORNEY TO FILE STATEMENT
OF SOCIAL SECURITY NUMBER(S)
12/10/03 [9]

Disposition Without Oral Argument: On December 10, 2003, the clerk issued the above-entitled Order To Show Cause based on the debtor's failure to file a statement of social security number.

On December 16, 2003, the debtor filed the missing document.

Accordingly, the order to show cause is discharged and this case shall remain pending because the debtor has shown cause by filing the missing document.

The court will issue a minute order.

44. 03-94735-A-13 ROBERT & JANICE KEETER

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL,
CONVERSION OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTORS AND/OR DEBTORS'
ATTORNEY TO FILE STATEMENT
OF SOCIAL SECURITY NUMBERS(S)
12/10/03 [7]

Disposition Without Oral Argument: On December 10, 2003, the clerk issued the above-entitled Order To Show Cause based on the debtors' failure to file a statement of social security number.

On December 15, 2003, the debtors filed the missing document.

Accordingly, the order to show cause is discharged and this case shall remain pending because the debtors have shown cause by filing the missing document.

The court will issue a minute order.

45. 03-94155-A-13 LUIS & NELLIE PENA

CASE DISMISSED EOD 12/10/03

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL, OR
IMPOSITION OF SANCTIONS FOR
FAILURE OF DEBTORS TO PAY
FILING FEE INSTALLMENT
(\$46.00 DUE NOVEMBER 19,
2003)
12/3/03 [19]

Disposition Without Oral Argument: The Order to Show Cause is discharged as moot because the case was dismissed December 10, 2003.

The court will issue a minute order.

46. 03-94683-A-13 YORDANOS GEBAI

HEARING ON ORDER TO
SHOW CAUSE RE DISMISSAL,
CONVERSION OR IMPOSITION OF
SANCTIONS FOR FAILURE OF
DEBTOR AND/OR DEBTOR'S
ATTORNEY TO FILE A MASTER
ADDRESS LIST
12/5/03 [6]

Tentative Ruling: None.

47. 01-93500-A-13 JASON & SANDRA REEDY
FW #1

HEARING ON MOTION TO
INCUR DEBT
11/25/03 [29]

Tentative Ruling: No Notice of Hearing was filed in violation of the LBR 9014-1(d)(2). Given the unique circumstances of this case, the court will not deny the motion under LBR 9014-1(1) and will allow opposition to be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

48. 02-94500-A-13 NOEL & MIRNA SALGADO
FW #1

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
CREDIT BUREAU OF OAKDALE
11/18/03 [11]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to the claim filed by the Bureau of Oakdale on January 28, 2003, ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]; however, the Claim is not properly completed where it claims a priority

interest but did not specify which subsection of §507(a) supports that classification, as directed to on the proof of claim, Box 6. Thus, the Claim does not constitute prima facie evidence of the nature of the Claim. The objection is sustained and the Claim is disallowed as a priority claim and allowed as a general unsecured claim, except to the extent already paid as a priority claim by the trustee in excess of the dividend to unsecured claims.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

49. 02-93401-A-13 BRIDGETTE STANFORD CONT. HEARING ON MOTION TO
FW #4 INCUR DEBT
10/27/03 [47]

Tentative Ruling: This motion was continued from December 2, 2003, by court-approved stipulation.

The motion to incur debt is denied. The debtor has not provided sufficient evidence that incurring the new debt is consistent with the perform of the confirmed plan. The evidence shows the debtor is continuing to default on her plan payments and does not have ability to make the requested monthly payment on a new loan.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

50. 01-92302-A-13 CLARENCE HALEY, SR. & HEARING ON MOTION TO
FW #1 STARLA HALEY MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/1/03 [35]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor_ shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

51. 03-91802-A-13 PAMELA J. LOOPER HEARING ON OBJECTION
DCJ #2 TO ALLOWANCE OF CLAIM NO. 7
OF RICK T. LOOPER
11/6/03 [32]

Tentative Ruling: The objection to claim No. 7, filed on September 18, 2003, is overruled as moot. On October 7, 2003, Mr. Looper filed a claim which amended the claim to which the debtor objects. Accordingly, the claim to which the debtor objects is no longer before the court.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

52. 03-91802-A-13 PAMELA J. LOOPER
DCJ #3

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM NO. 8
OF RICK T. LOOPER
11/6/03 [35]

Tentative Ruling: The objection is sustained, and claim No. 8 on ECF is disallowed as untimely filed.

Mr. Looper does not contest that his September 18, 2003 and October 7, 2003 proofs of claim were filed after the claims bar deadline. Rather, he argues that the informal claim doctrine under Ninth Circuit law saves his claim.

To constitute an informal proof of claim, a creditor must point to an explicit demand which shows the nature and amount of the claim and an intent to hold the debtor liable for it. Sambo's Rests., Inc. v. Wheeler (In re Sambo's Rests., Inc.), 754 F.2d 811, 815 (9th Cir. 1985). The demand constituting the informal proof of claim need not appear in the bankruptcy court's docket. Id.; County of Orange v. Merrill Lynch & Co., Inc. (In re County of Orange), 191 B.R. 1005, 1022 (Bankr. C.D. Cal. 1996).

Mr. Looper points to the following documentation and actions in this case as creating an informal proof of claim: his and his counsel's participation in the section 341 meetings; their assistance to the chapter 13 trustee; and his application for a 2004 examination. The court notes that the debtor and Mr. Looper also litigated the enforcement of the 2004 application. Other documentation and actions to which Mr. Looper points happened in state court, in his own prior bankruptcy case and in the debtor's prior bankruptcy. These documents include a complaint for non-dischargeability in the debtor's prior chapter 7 case, and the couple's state court dissolution proceedings. There is an abundance of evidence that the debtor and Mr. Looper have engaged in extensive, protracted litigation over his allegations that the debtor misappropriated his assets.

An informal claim must be asserted during the bankruptcy case in which it is intended to participate and before the claim filing deadline. First, the concept of a proof of claim is only relevant in the context of a bankruptcy case. Second, were the rule otherwise, every creditor who ever sent a pre-filing invoice or billing statement to a debtor would have an amendable informal proof of claim, and the concept of a claim filing deadline would be completely nullified.

Mr. Looper has not shown any document presented to the debtor or the trustee between the date of the filing of the bankruptcy petition in this case and the claims bar deadline which constitutes a timely informal proof of claim. At best, he submitted an application for a 2004 examination, but that document does not show the nature and amount of the debt for which he intended to hold the debtor liable in this particular bankruptcy.

Counsel for the debtor shall submit an order that conforms to the court's

ruling.

53. 03-91802-A-13 PAMELA J. LOOPER
DCJ #4

HEARING ON MOTION FOR
RELIEF FROM ORDER DENYING
DEBTOR'S MOTION TO VACATE
ORDER OF EXAMINATION AND TO
QUASH SUBPOENA
11/7/03 [42]

Tentative Ruling: The motion to vacate the court's November 5, 2003, order is granted under Bankruptcy 9024 and F.R.Civ.P. 60(b)(4).

Where the court has sustained the debtor's objections to Mr. Looper's claim, it is no longer equitable that court's prior order have prospective application. Bankruptcy Rule 2004 would have allowed Mr. Looper, as a party-in-interest, to conduct discovery regarding the debtor's "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." B.R. 2004(b). The court having determined that Mr. Looper is not a creditor, there is no reason to allow him to conduct a 2004 examination.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

54. 03-91802-A-13 PAMELA J. LOOPER
DCJ #5

HEARING ON DEBTOR'S
MOTION TO QUASH SUBPOENA OF
NOVEMBER 4, 2003
11/7/03 [38]

Tentative Ruling: The motion is granted.

The court sustained the debtor's objection to Rick Looper's claim No. 8 in matter No. 52 on this calendar. Bankruptcy Rule 2004 would have allowed Mr. Looper, as a party-in-interest, to conduct discovery regarding the debtor's "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." B.R. 2004(b). The court having determined that Mr. Looper is not a creditor, there is no reason to allow him to conduct a 2004 examination.

This ruling does not constitute a ruling on Mr. Looper's argument that his chapter 7 trustee effectively abandoned any asset, or on any issue relating to Ms. Looper's constitutional rights which may be implicated given her pending criminal charges.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

55. 03-93703-A-13 RALPH A. PIZZI
HWW #1

HEARING ON MOTION TO
CONFIRM CHAPTER 13 PLAN
11/17/03 [18]

CASE DISMISSED EOD 12/16/03

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed December 16, 2003.

The court will issue a minute order.

56. 03-91004-A-13 BOB & LORINDA WILLIAMS
FW #1

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
CAPITAL ONE BANK
11/20/03 [27]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Therefore, the objection to claim No. 5 on ECF, filed by Capital One Bank, ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]; however, the Claim is not properly completed where it claims a security interest but attaches no security documents or proof of perfection. B.R. 3001(c) and (d). Thus, the Claim does not constitute prima facie evidence of the validity and amount of the Claim. The objection is sustained and the Claim is disallowed as a secured claim and allowed as a general unsecured claim, except to the extent already paid as a secured claim by the trustee in excess of the dividend to unsecured claims.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

57. 03-94004-A-13 RHEA L. LOPEZ
MB #1

HEARING ON OBJECTIONS
TO PROPOSED CHAPTER 13 PLAN
AND CONFIRMATION THEREOF
FILED BY THE LEADER MORTGAGE
COMPANY
12/3/03 [13]

Disposition Without Oral Argument: The objection is overruled as moot because the case was dismissed December 18, 2003.

The court will issue a minute order.

58. 03-94004-A-13 RHEA L. LOPEZ
RDG #1

HEARING ON TRUSTEE'S
OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
12/3/03 [19]

Disposition Without Oral Argument: The objection is overruled as moot because the case was dismissed December 18, 2003.

The court will issue a minute order.

59. 03-94004-A-13 RHEA L. LOPEZ
RDG #2

HEARING ON TRUSTEE'S
OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS
12/3/03 [22]

Disposition Without Oral Argument: The objection is overruled as moot and the motion is denied as moot because the case was dismissed December 18, 2003.

The court will issue a minute order.

60. 03-94007-A-13 BRIAN & CHRISTINE MCKEEHAN
RDG #1

HEARING ON TRUSTEE'S
OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS
12/3/03 [15]

Tentative Ruling: The trustee's plan objections are overruled and motion to dismiss is denied as moot. On December 16, 2003, the debtors filed an amended plan which will be heard by the court for confirmation on February 3, 2004. The plan to which the trustee objected is no longer before the court. Given the new proposed plan, there is no cause to dismiss this case.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

61. 03-93511-A-13 EUGENE & LYNN KELLY
FW #1

HEARING ON MOTION TO
CONFIRM AMENDED CHAPTER 13
PLAN
11/20/03 [21]

CASE DISMISSED EOD 12/8/03

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed December 8, 2003.

The court will issue a minute order.

62. 03-91912-A-13 STEVEN & MARY DOHNERT
CWP #2

HEARING ON MOTION TO
CONFIRM DEBTORS' THIRD
AMENDED CHAPTER 13 PLAN
11/20/03 [31]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), and 1325(a).

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

63. 03-92012-A-13 GARRETT J. KREBBS
JCK #2

HEARING ON DEBTOR'S
OBJECTION TO ALLOWANCE OF
CLAIM FILED BY SALLIE
MAE GUARANTEE SERVICES, INC.
11/12/03 [29]

Disposition Without Oral Argument: This objection has been filed pursuant to LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1)(ii). Therefore, the objection to claim No. 9 in the trustee's December 18, 2003 Notice of Filed claims, filed by Sallie Mae Guarantee Services, Inc. on June 30, 2003, ("Claim") is resolved without oral argument.

The objection is sustained. The debtor questions the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

Counsel for the debtor shall submit an order that conforms to the court's ruling.

64. 03-93412-A-13 THOMAS & PRISCILLA DURAN
RDG #1

HEARING ON TRUSTEE'S
OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS
12/3/03 [24]

Tentative Ruling: The trustee's plan objections are overruled and motion to dismiss is denied as moot. On December 23, 2003, the debtors filed an amended plan which will be heard by the court for confirmation on February 3, 2004. The plan to which the trustee objected is no longer before the court. Given the new proposed plan and the debtors' assertion

that they provided the requested documents to the trustee, there is no cause to dismiss this case.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

65.	03-93512-A-13 PATRICIA WEIN FW #1	HEARING ON MOTION TO MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN 11/25/03 [16]
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Tentative Ruling: The trustee's objection is overruled and the motion is granted. The debtor's reply shows she tendered the missing document which was the subject of the trustee's objection. In the absence of any other opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

66.	03-94212-A-13 ANDY A. REYNOLDS MB #1	HEARING ON OBJECTIONS TO PROPOSED CHAPTER 13 PLAN AND CONFIRMATION THEREOF FILED BY COUNTRYWIDE HOME LOANS, INC. 11/24/03 [9]
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Disposition Without Oral Argument: This matter is continued to February 17, 2004, at 1:30 p.m., to be heard concurrently with the debtor's objection to this creditor's claim.

The court will issue a minute order.

67.	03-90113-A-13 NORMAN & CAROLYN MCINNIS FW #1	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF RETAILER NATIONAL BANK- MERVYNS 11/20/03 [14]
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Disposition Without Oral Argument: This objection has been filed pursuant to LBR 9014-1(f)(1). The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1)(ii). Therefore, the objection to claim No. 12 on ECF, filed by Retailers National Bank - Mervyn ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was May 27, 2003, and to file a government claim was July 9, 2003. Retailers National Bank - Mervyn filed the Claim for \$983.77 on August 12, 2003.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

Counsel for the debtors shall submit an order that conforms to the court's ruling.

68. 03-93914-A-13 LAWRENCE & LYNDIA LAFLAMME HEARING ON MOTION TO
FW #1 CONFIRM AMENDED CHAPTER 13
PLAN
11/19/03 [14]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), and 1325(a).

The attached motion to value collateral of Franklin Capital is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2001 Kia, had a value of \$7,262.50 on the date of the petition. Thus, \$7,262.50 of its claim is an allowed secured claim, based on this valuation.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

69. 03-92517-A-13 JAMES R. HANNA HEARING ON MOTION TO
PCP #3 CONFIRM SECOND AMENDED
CHAPTER 13 PLAN
11/17/03 [35]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), and 1325(a).

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

70. 02-92118-A-13 TED & JEANNE SERRANO HEARING ON MOTION TO
FW #5 INCUR DEBT
12/3/03 [62]

Tentative Ruling: The trustee's objection is overruled and the motion to incur debt is conditionally granted, subject to (1) the inclusion of the

trustee's standard conditions; and (2) payment of net proceeds of the refinance to the trustee from escrow. The trustee may pay claims as provided in the debtors' currently confirmed plan and hold the balance of the loan proceeds until either the debtors confirm a modified plan or further order of the court.

With those conditions, the sale is consistent with the debtors' performance of the confirmed plan.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

71. 03-93618-A-13 MICHAEL MING
DN #1

HEARING ON MOTION TO
CONFIRM AMENDED PLAN
11/21/03 [13]

Disposition Without Oral Argument: This matter is continued to February 17, 2004, at 1:30 p.m., to be heard concurrently with the debtor's objection to this creditor's claim.

The court will issue a minute order.

72. 03-93618-A-13 MICHAEL MING
SJM #1

HEARING ON OBJECTION
TO CONFIRMATION OF DEBTOR'S
CHAPTER 13 PLAN FILED BY
CHASE MANHATTAN MORTGAGE
CORPORATION
12/10/03 [17]

Disposition Without Oral Argument: This matter is continued to February 17, 2004, at 1:30 p.m., to be heard concurrently with the debtor's objection to this creditor's claim.

The court will issue a minute order.

73. 03-93820-A-13 DANNY & LORI BLANCHARD
JCK #1

HEARING ON MOTION TO
CONFIRM THE FIRST AMENDED
CHAPTER 13 PLAN
12/09/03 [44]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, G.O. 03-03 ¶¶ 1(a) & 8(a) which state in relevant part: "Because FRBP 2002(b) requires that parties in interest receive at least 25 days' notice of the time fixed for filing objections and the hearing to consider confirmation of a chapter 13 plan proposed before confirmation of a plan, the debtor shall not set the

hearing on the motion pursuant to Local Bankruptcy Rule 9014-1(f)(2). Notice of the hearing and the deadline for objections shall be given pursuant to Local Bankruptcy Rule 9014-1(f)(1)." Debtors noticed this motion under LBR 9014-1(f)(2).

The court will issue a minute order.

74.	99-92420-A-13 HECTOR & ELOISA MARQUEZ JCK #5	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF FORD MOTOR CREDIT CO. 11/12/03 [47]
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Tentative Ruling: The objection is overruled.

The objection improperly asks the court allow the claim "in the amount already paid by the trustee" which is \$14,104.57. Claims are determined as of the time of the filing of the case. In the absence of a sustained objection, a claim is determined in the creditor's filed claim. The debtor has presented no evidence of any value different from the filed claim as of the date of the filing of the case. Altering the treatment of a claim requires a plan modification, not a claim objection.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

75.	03-91921-A-13 JOYCE PARHAM FW #1	HEARING ON MOTION TO MODIFY DEBTOR'S CONFIRMED CHAPTER 13 PLAN 12/2/03 [26]
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Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

76.	03-93121-A-13 SYLVESTER ROBINSON PRB #1	HEARING ON MOTION FOR ORDER CONFIRMING CHAPTER 13 PLAN OF REORGANIZATION 12/4/03 [55]
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Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, LBR 9014-1, Bankruptcy Rule 2002(b) and General Order 03-03 ¶¶ 1(a) & 8(a) (requiring at least thirty-nine days notice of a motion to confirm an amended chapter 13 plan under 11 U.S.C. § 1323). Movant only provided thirty-four days notice.

The court will issue a minute order.

77.	03-93821-A-13 WILLARD & BARBARA SUMMERLOT JCK #2	HEARING ON MOTION TO CONFIRM THE FIRST AMENDED CHAPTER 13 PLAN 12/2/03 [30]
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Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, LBR 9014-1, Bankruptcy Rule 2002(b) and General Order 03-03 ¶¶ 1(a) & 8(a) (requiring at least thirty-nine days notice of a motion to confirm an amended chapter 13 plan under 11 U.S.C. § 1323). Movant only provided thirty-five days notice in their original notice of hearing and twenty-six days notice in the amended notice of hearing.

The court will issue a minute order.

78.	00-91522-A-13 MICHAEL & PATRICIA SILVA FW #5	HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 11/21/03 [76]
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Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

79.	03-94523-A-13 GILBERT & BIANCA CORONADO SW #1	HEARING ON OBJECTION TO CONFIRMATION OF PLAN AND COLLATERAL VALUATION MOTION FILED BY GMAC 12/9/03 [10]
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Disposition Without Oral Argument: This matter is resolved by court

approved stipulation signed January 5, 2004. It is removed from the calendar.

80. 03-94124-A-13 TEE ANOULUC
SJM #1

HEARING ON OBJECTION
TO CONFIRMATION OF DEBTOR'S
CHAPTER 13 PLAN FILED BY
BANK OF AMERICA, N.A.
11/26/03 [21]

Tentative Ruling: The creditor's objection is conditionally overruled as set forth below.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

Bank of America's ("Creditor") objection is conditionally overruled if debtor provides for the correct amount of arrears owing to Creditor (\$11,126.45) in the Order confirming plan. With that addition, the plan is confirmed. In the absence of any additional objections, the court finds that the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Creditor's request to dismiss the case pursuant to 11 U.S.C. § 109(g) is denied. As an initial matter, the court notes that Section 109(g) is not a dismissal statute. It is an eligibility statute and there is no evidence that debtor is ineligible for chapter 13 relief. Furthermore, the court finds no cause to dismiss this case under 11 U.S.C. § 1307 at this time. Should Creditor seek dismissal of a case in the future, it should not include the request as an afterthought in the motion's prayer but should endeavor to address the merits of the request in the motion itself. See LBR 9014-1(d)(5) and (d)(6).

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee.

81. 03-94125-A-13 JOSE & CELIA BUSTAMANTE
RLE #1

HEARING ON OBJECTION
TO CONFIRMATION OF DEBTORS'
CHAPTER 13 PLAN AND TO THE
MOTION TO VALUE ITS
COLLATERAL FILED BY FORD
CREDIT TITLING TRUST
12/3/03 [15]

CASE DISMISSED EOD 12/17/03

Disposition Without Oral Argument: The objection is overruled as moot because the debtors voluntarily dismissed this case on December 17, 2003.

The court will issue a minute order.

82. 03-91626-A-13 JOSE & LISA BAUTISTA
DN #1

CONT. HEARING ON MOTION TO
CONFIRM AMENDED PLAN
8/14/03 [29]

Tentative Ruling: The trustee's objections are sustained in part and overruled in part, and the motion to confirm the amended plan is denied, as set forth below.

Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(iii).

The trustee's objection regarding the lack of motions to value debtors' two vehicles is overruled. The court granted two stand alone valuation motions on November 18, 2003 and below at matter 83. The trustee's feasibility objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

83. 03-91626-A-13 JOSE & LISA BAUTISTA
DN #3

HEARING ON MOTION TO
DETERMINE VALUE OF COLLATERAL
OF WFS FINANCIAL
12/4/03 [52]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 1997 Chevy truck, had a value of \$7,337.00 on the date of the petition. Thus, \$7,337.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

84. 03-93926-A-13 LATANYA DENISE MOORE
RDG #1

HEARING ON TRUSTEE'S
OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS
11/25/03 [11]

Disposition Without Oral Argument: The objection to confirmation is overruled as moot and the motion to dismiss is denied for lack of standing. This case converted to one under chapter 7 on December 19, 2003 and the chapter 13 trustee's involvement in the case terminated.

The court will issue a minute order.

85. 03-93227-A-13 TIMOTEO S. REYES, JR. &
SAC #3 CHERYL REYES

HEARING ON FIRST
INTERIM APPLICATION FOR
ATTORNEYS' FEES OF SCOTT A.
COBEN & ASSOCIATES
11/26/03 [23]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The application is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This notice of hearing fails to comply with LBR 9014-1(d)(2) (requiring, inter alia, that the notice of hearing state the location of the courthouse). Applicant's notice of hearing states that the hearing on this matter will take place at the courthouse in Sacramento. This calendar is being heard in Modesto.

The court will issue a minute order.

86. 03-94027-A-13 LARRY & ANA SHARPE
RLE #1

HEARING ON OBJECTION
TO CONFIRMATION OF DEBTORS'
CHAPTER 13 PLAN AND TO THE
MOTION TO VALUE ITS
COLLATERAL FILED BY
DAIMLERCHRYSLER SERVICES
NORTH AMERICA LLC
12/3/03 [17]

Disposition Without Oral Argument: Objecting creditor withdrew this matter on December 31, 2003. It is removed from the calendar.

87. 03-93330-A-13 ARNOLD WHITE
FW #1

HEARING ON MOTION
TO CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
11/12/03 [20]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of any opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

The motion to value the collateral of Stanford Federal Credit Union is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 1996 Mercedes Benz S320, had a value of \$16,195.00 on the date of the petition. Thus, \$16,195.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

88. 03-90631-A-13 MARY AGUIRRE
DN #1

HEARING ON MOTION TO
MODIFY PLAN
11/21/03 [16]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

89. 00-94533-A-13 SALVADOR URRUTIA, JR. &
JCK #5 SELENA GASTELUM

HEARING ON MOTION TO
INCUR FURTHER INDEBTEDNESS
FOR THE REFINANCE OF REAL
PROPERTY
12/4/03 [61]

Disposition Without Oral Argument: The debtors withdrew this matter on December 30, 2003. It is removed from the calendar.

90. 00-94533-A-13 SALVADOR URRUTIA, JR. & HEARING ON MOTION TO
JCK #6 SELENA GASTELUM MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/4/03 [63]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, G.O. 03-03 ¶¶ 1(a) & 8(b) which state in relevant part: "Because FRBP 3015(g) requires that parties in interest receive at least 20 days notice of the time fixed for filing objections and the hearing to consider confirmation of a modified chapter 13 plan proposed after confirmation of a plan, the debtor shall not set the hearing on the motion pursuant to Local Bankruptcy Rule 9014-1(f)(2). Notice of the hearing and the deadline for objections shall be given pursuant to Local Bankruptcy Rule 9014-1(f)(1)." Debtors noticed this motion under LBR 9014-1(f)(2). Furthermore, debtors provided thirty-three days notice of the hearing and twenty-eight days notice of the proposed modified plan itself which violates LBR 9014-1(f)(1) and FRBP 3015(g). Pursuant to FRBP 9006(c)(2), this time cannot be shortened.

The court will issue a minute order.

91. 03-90435-A-13 ALVA ANDERSON & HEARING ON MOTION TO
FW #1 NANCY ANDERSON-BREWER MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11/21/03 [26]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

92. 03-93035-A-13 KENNETH R. MILLER, JR. & HEARING ON MOTION FOR
WLW #1 JESSAMY A. MILLER CONFIRMATION OF DEBTORS'
AMENDED CHAPTER 13 PLAN
11/24/03 [33]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M.

Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

93.	03-93938-A-13 JOSE & GRACE ESPINOZA LCL #1	HEARING ON MOTION FOR CONFIRMATION OF AMENDED CHAPTER 13 PLAN 11/24/03 [16]
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Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

The motion to value the collateral of Capital One Auto Finance is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2001 Dodge Intrepid, had a value of \$10,000 on the date of the petition. Thus, \$10,000 of its claim is an allowed secured claim, based on this valuation.

The motion to value the collateral of The Diamond Center is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, an engagement ring, had a value of \$200.00 on the date of the petition. Thus, \$200.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

94.	03-90339-A-13 STEPHEN & TAMMIE HART WW #2	HEARING ON MOTION TO CONFIRM SECOND MODIFIED CHAPTER 13 PLAN 11/21/03 [61]
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Tentative Ruling: The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

95. 99-92839-A-13 ALAN & CARA BROWN
FW #4

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11/24/03 [111]

Tentative Ruling: The trustee's objections are sustained, and the motion to modify is denied, as set forth below.

Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f) (1) (iii).

The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) and (a)(6). Additionally, the court notes that there is no evidence attached to the motion regarding the source of the proposed lump sum payment. Thus the plan is not feasible. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

96. 03-94040-A-13 WILLIE WOODS
FW #1

HEARING ON MOTION TO
CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
11/24/03 [14]

Tentative Ruling: The trustee's objection is sustained, and the motion to modify is denied, as set forth below.

Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f) (1) (iii).

The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The attached and unopposed motion pursuant to 11 U.S.C. § 522(f)(1)(B) is

granted. Citifinancial holds a nonpossessory, nonpurchase money security interest in household furnishings and goods owned by the debtor and used by the debtor's household as such. These items have been exempted by the debtors. There is no non-exempt equity. The fixing of the respondent's security interest and lien impairs the debtor's exemption and the fixing is avoided.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

97.	03-92441-A-13 JOHNNY THOMPSON, SR. & FW #1 ELLA THOMPSON	HEARING ON MOTION TO MODIFY DEBTORS' CONFIRMED CHAPTER 13 PLAN 11/14/03 [30]
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Tentative Ruling: The motion to confirm is denied.

The debtors failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Specifically, the debtors failed in their burden of proving feasibility in this case: the motion does not address how debtors will be able to fund the stepped-up payments of \$645, an almost \$200.00 per month increase, beginning in April 2004. Neither the motion, declaration, nor debtors' filed Schedules I and J show an ability to make the increased payment.

Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

98.	03-93941-A-13 HAROLD DELLAFOSSE, JR. & DRW #1 EVAI DELLAFOSSE	HEARING ON OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY OCWEN FEDERAL BANK 11/24/03 [13]
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Tentative Ruling: The creditor's objections are conditionally overruled in part, overruled in part and sustained in part as set forth below.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

Secured Creditor Ocwen Federal Bank, ("Creditor") states four objections to debtors' request for confirmation of debtors' chapter 13 plan. Creditor argues: (1) the plan understates the pre-petition arrears; (2)

the monthly payment and late fee are \$2,360.26 and \$141.62 respectively and are subject to change; (3) inclusion of the first post-petition payment and late charge in Class 1 impermissibly modifies the loan in violation of 11 U.S.C. § 1322(b)(2); and (4) there is no cause for a plan term greater than thirty-six months. The court will address each objection below.

(1) Arrears amount. The objection is conditionally overruled if debtors provide for the claimed arrears amount (\$7,839.37) in the order confirming plan as consented in debtors' response.

(2) Payment and late fee amounts. The objection is overruled. The plan contains the correct amounts in Class 1. The plan itself deals with debtors' and trustee's obligations regarding this adjustable rate note as the payment amount changes.

(3) Inclusion of the first post-petition payment. The objection is sustained. This plan was proposed by debtors on October 2, 2003. They proposed to include the November 2003 payment and late charge in the plan to be paid as a Class 1 claim. The subject debt is secured solely by a deed of trust against debtors' residence. The objection is sustained because the subject payment was not in arrears when debtors proposed its inclusion in the plan. Such an attempt to include a future payment as a delinquency to be "cured" is a modification of the loan agreement that violates 11 U.S.C. § 1322(b)(2) and is not saved by § 1322(b)(5). The authority cited by debtors (that is actually accessible) in their response is followed by this court to the extent that it permits the cure of post-petition arrears through a modified or amended plan. However the cases and treatises are distinguishable because in this instance, there was nothing to cure under Section 1322(b)(5) because the payment was not yet in default when the plan was proposed. The debtors' argument that the inclusion a future payment is "necessary" is properly addressed to Congress, not this court.

(4) Plan term. The objection is overruled. Debtors' Schedules I and J provide sufficient cause for a plan term greater than thirty-six months.

Because the third objection is sustained, confirmation of the debtors' plan is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(5). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The attached and unopposed motion to value the collateral of Menlo Survey Federal Credit Union is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 1988 Ford Festiva hatchback and a 2000 Chevy Venture van, had an aggregate value of \$11,142.50 on the date of the petition. Thus, \$11,142.50 of its claim is an allowed secured claim, based on this valuation.

Counsel for Creditor shall submit an order that conforms to the court's ruling.

99. 03-93443-A-13 GUY & DENISE ARMSTRONG
JCK #1

HEARING ON MOTION TO
VALUE COLLATERAL OF UNITED
CONSUMER FINANCIAL SERVICES
11/13/03 [16]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion to value the collateral of Consumer Financial Services is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a Kirby Vacuum, had a value of \$350.00 on the date of the petition. Thus, \$350.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

100. 03-93443-A-13 GUY & DENISE ARMSTRONG
RDG #1

HEARING ON TRUSTEE'S
OBJECTION TO DEBTORS'
CLAIM OF EXEMPTIONS
11/25/03 [27]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The trustee's objections to debtors' claims of exemption are sustained for the reasons set forth in the objection. The exemption claims under California Code of Civil Procedure Sections 703.140(b)(1) and (b)(5) are disallowed in any amount greater than the statutory maximum of \$18,350.00. The exemption claim under California Code of Civil Procedure Sections 703.140(b)(4) is disallowed in any amount greater than the statutory maximum of \$1,150.00.

Counsel for trustee shall submit an order that conforms to the court's ruling.

101. 03-93643-A-13 CHARLES & PENELOPE BUSH
FW #1

HEARING ON MOTION TO
CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
11/24/03 [17]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

102. 03-94044-A-13 ROBERT TOULOUSE
JCK #1

HEARING ON MOTION TO
VALUE COLLATERAL OF FORD
MOTOR CREDIT CO.
11/18/03 [9]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion to value the collateral of Ford Motor Credit Co., is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2002 Ford Ranger, had a value of \$7,745.00 on the date of the petition. Thus, \$7,745.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtor shall submit an order that conforms to the court's ruling.

103. 03-94048-A-13 GREGORY J. BRAUN
UST #1

HEARING ON THE UNITED
STATES TRUSTEE'S MOTION TO
DISMISS CHAPTER 13 CASE
(1) WITH PREJUDICE TO
DISCHARGING EXISTING DEBTS
AND (2) WITH A TWO-YEAR BAR
TO REFILING
12/1/03 [9]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The motion is denied without prejudice, pursuant to LBR 9014-1(l). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, LBR 9014-1(d)(3). The motion states that it is filed under LBR 9014-1(f)(2) [no written opposition required], while the notice of hearing requires written opposition fourteen days before hearing. The notice of hearing also has inconsistent hearing dates within the body of the notice. The inconsistencies can lead to confusion especially with pro se debtors.

The court will issue a minute order.

104. 01-92349-A-13 KYM D. BOWEN, SR.
DN #3

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
HOMECOMINGS FINANCIAL FILED
DECEMBER 31, 2001 FOR
\$12,978.34
11/13/03 [28]

Disposition Without Oral Argument: Oral argument would not benefit the court in rendering a decision on this matter.

The objection to claim is overruled without prejudice, pursuant to LBR 9014-1(1). The debtor has failed to serve all proper parties with the motion. The proof of service filed with the court shows that the moving papers were served on the claimant at the wrong suite number. Furthermore, debtor failed to serve claimant's attorney at the address located in the June 29, 2001 request for special notice.

The court will issue a minute order.

105. 03-93949-A-13 KEITH & SHERI METTLER
PFF #2

HEARING ON MOTION FOR
CONFIRMATION OF DEBTORS'
FIRST AMENDED CHAPTER 13
PLAN
12/10/03 [26]

Disposition Without Oral Argument: Given the filing defects under the local bankruptcy rules, oral argument would not benefit the court in rendering a decision on this motion.

The motion is denied without prejudice, pursuant to LBR 9014-1(1). No monetary sanctions are imposed.

This motion fails to comply with, inter alia, G.O. 03-03 ¶¶ 1(a) & 8(a) which state in relevant part: "Because FRBP 2002(b) requires that parties in interest receive at least 25 days' notice of the time fixed for filing objections and the hearing to consider confirmation of a chapter 13 plan proposed before confirmation of a plan, the debtor shall not set the hearing on the motion pursuant to Local Bankruptcy Rule 9014-1(f)(2). Notice of the hearing and the deadline for objections shall be given pursuant to Local Bankruptcy Rule 9014-1(f)(1)." Debtors noticed this motion under LBR 9014-1(f)(2).

The court will issue a separate order to show cause under Federal Rules of Bankruptcy Procedure 9011(b)(2) and (c)(1)(B) because counsel for debtors previously sought confirmation of the same amended plan using the 9014-1(f)(2) procedure; which motion was denied for the identical reason on December 8, 2003.

The court will issue a minute order.

106. 02-92850-A-13 JASON & JENNIFER NEWCOMB
FW #4

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11/14/03 [44]

Tentative Ruling: The trustee's objections are sustained, and the motion to modify is denied, as set forth below.

Respondent has consented in the opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Movant did not file within the time for reply a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, movant has also consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f) (1) (iii).

The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(1) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

107. 03-93851-A-13 RODNEY & TONJA CLARK
FW #1

HEARING ON MOTION TO
CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
11/17/03 [14]

Tentative Ruling: None.

108. 03-92453-A-13 LEE & STACEY KIRKWOOD
MJH #2

HEARING ON OBJECTION
TO ALLOWANCE OF UNSECURED
CLAIM NO. 6 OF DIRECTV, INC.
11/10/03 [28]

Tentative Ruling: On January 5, 2004, the parties submitted a stipulation purporting to resolve this matter. Nothing therein actually deals with the matter on calendar. This matter is therefore dropped from calendar as resolved by stipulation.

Counsel for debtors shall submit an order that resolves the objection to claim and approves the stipulation.

109. 03-92555-A-13 SAUL & KAREN CANNON
JCK #2

HEARING ON MOTION TO
CONFIRM THE FIRST AMENDED
CHAPTER 13 PLAN
11/25/03 [36]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

110. 03-92555-A-13 SAUL & KAREN CANNON
JCK #3

HEARING ON MOTION TO
VALUE COLLATERAL OF
AMERICREDIT
11/25/03 [39]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion to value the collateral of Americredit is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 1996 Chrysler Concorde, had a value of \$6,145.00 on the date of the petition. Thus, \$6,145.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

111. 03-92555-A-13 SAUL & KAREN CANNON
JCK #4

HEARING ON MOTION TO
VALUE COLLATERAL OF TRIAD
FINANCIAL SERVICES, INC.
11/25/03 [42]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion to value the collateral of Triad Financial Services, Inc., is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 1999 Ford Ranger, had a value of \$8,155.00 on the date of the petition. Thus, \$8,155.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

112. 03-93955-A-13 JOHN L. MALDONADO
RLE #1

HEARING ON OBJECTION
TO CONFIRMATION OF DEBTOR'S
CHAPTER 13 PLAN AND TO THE
MOTION TO VALUE ITS
COLLATERAL FILED BY FORD
MOTOR CREDIT COMPANY
12/3/03 [15]

Disposition Without Oral Argument: Oral argument would not benefit the court in rendering a decision on this matter.

The objection to confirmation is overruled. Pursuant to General Order 03-03 ¶ 3(c), creditors have fourteen days after the conclusion of the Section 341 meeting of creditors to file their objections to confirmation. Creditor filed this objection seven days late. Creditor's application to file this late objection to confirmation was denied on December 4, 2003. The objection to confirmation violates the General Order and is therefore overruled.

The court will issue a minute order.

113. 99-93155-A-13 ZACHARY & CHRISTINA
HWW #2 LAMPITOK

HEARING ON MOTION TO
INCUR DEBT
12/3/03 [96]

Disposition Without Oral Argument: Oral argument would not benefit the court in rendering a decision on this matter.

The motion to incur debt is granted subject to the inclusion of the trustee's three conditions. Debtors have consented to the conditions in their reply. Incurring the new debt is consistent with the debtors' performance of the plan confirmed at matter 114 below.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

114. 99-93155-A-13 ZACHARY & CHRISTINA
HWW #3 LAMPITOK

HEARING ON MOTION TO
MODIFY CHAPTER 13 PLAN
12/3/03 [102]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

115. 03-93957-A-13 FULGENCIO & SUSANA AVILA
RDG #1

HEARING ON TRUSTEE'S
OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS
11/25/03 [12]

Disposition Without Oral Argument: The objection to confirmation is overruled as moot and the motion to dismiss is denied for lack of standing. This case converted to one under chapter 7 on December 3, 2003 and the chapter 13 trustee's involvement in the case terminated.

The court will issue a minute order.

116. 03-92658-A-13 RICHARD & SANDRA DWYER
MSN #1

CONT. HEARING ON MOTION TO
CONFIRM AMENDED CHAPTER 13
PLAN
9/26/03 [31]

Tentative Ruling: The trustee's objection is overruled as moot because the stand alone motion to value the collateral of Mitsubishi Motors is granted at matter 117 below. No other objections having been filed, the motion is granted. In the absence of additional opposition, the court finds that the amended plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the amended plan.

117. 03-92658-A-13 RICHARD & SANDRA DWYER
MSN #1

HEARING ON MOTION TO
VALUE COLLATERAL OF
MITSUBISHI MOTORS
11/26/03 [42]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved without oral argument.

The motion to value the collateral of Mitsubishi Motors is granted pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a). The creditor's collateral, a 2002 Mitsubishi Lancer, had a value of \$9,000.00 on the date of the petition. Thus, \$9,000.00 of its claim is an allowed secured claim, based on this valuation.

Counsel for debtors shall submit an order that conforms to the court's ruling.

118. 03-94058-A-13 JASON & LORENA BERGGREN
RDG #1

HEARING ON TRUSTEE'S
OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS
11/25/03 [13]

Tentative Ruling: The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and confirmation is denied. The motion to dismiss is conditionally denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The trustee's motion to dismiss is conditionally denied. The debtors shall have until January 16, 2003 to (i) provide the trustee with copies of the relevant tax returns, file an amended plan that addresses the under-withholding on debtors' Schedule I and set a motion to confirm the amended plan for hearing on the next available calendar that provides proper notice or (ii) convert the case to Chapter 7. If the debtor does neither of those things, the court will dismiss the case without further notice or hearing on the trustee's ex parte declaration of non-compliance.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

119. 03-94060-A-13 LORELEE M. NICHOLS

HEARING ON OBJECTION
TO CHAPTER 13 PLAN FILED BY
GUARANTY RESIDENTIAL
LENDING, INC. VS.
11/26/03 [14]

Tentative Ruling: The creditor's objections are conditionally overruled in part, overruled in part and sustained in part as set forth below.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

Secured Creditor Guarantee Residential Lending, Inc., ("Creditor") states three objections to debtor's request for confirmation of debtor's chapter 13 plan. Creditor argues: (1) the debtor has failed to make the first post-petition payment; (2) the plan is not filed in good faith because this is debtor's "second consecutive bankruptcy"; and (3) the plan understates the arrearage and if the higher amount is included, the plan is not feasible. The court will address each objection below.

(1) post-petition payments. The objection is overruled. The chapter 13

trustee is responsible for making all post-petition payments under the plan utilized in this case. The debtor provides evidence that she is current on her plan payments and that the trustee has made the scheduled disbursements. Debtor is not in default.

(2) Good faith. The objection is overruled. In this instance, the debtor's prior bankruptcy case is utterly irrelevant. The debtor was involved in a prior chapter 7 case that she and her husband filed in December 1997. They received their chapter 7 discharge in August 1998. There is nearly a five year gap between debtor's discharge in that case and the filing of this case. This objection borders on frivolous.

(3) Arrears amount and feasibility. The objection to the arrears amount is conditionally overruled if debtors provide for the claimed arrears amount (\$42,839.05) in the order confirming plan. The feasibility objection is sustained. There is no evidence that debtor can pay the additional \$400.00 in plan payments proposed in her response.

Because the feasibility objection is sustained, confirmation of the debtor's plan is denied. The debtor has failed to carry her burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Creditor's request to dismiss the case is denied. There is no cause for dismissal at this point. The request for distribution to creditor of funds "earmarked for creditor" is denied for lack of legal authority for the request. LBR 9014-1(d)(5). Creditor's request for an adequate protection order is also denied. Creditor should make that request by motion under 11 U.S.C. § 362(d).

Counsel for Creditor shall submit an order that conforms to the court's ruling.

120. 03-90163-A-13 LEROY & CINDIE WOLF
FW #1

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11/14/03 [24]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

121. 03-93765-A-13 GEORGE & DEBORA CEJA
FW #1

HEARING ON MOTION TO
CONFIRM AMENDED CHAPTER 13
PLAN
11/17/03 [17]

ORDER DISMISSING EOD 12/8/03

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on December 8, 2003.

The court will issue a minute order.

122. 03-94565-A-13 LYNN J. RAY
DRW #1

HEARING ON OBJECTION
TO CONFIRMATION OF PLAN
FILED BY WACHOVIA BANK
12/11/03 [14]

Disposition Without Oral Argument: This matter is continued by the court to February 17, 2004 at 1:30 p.m. to be heard with any additional objections to confirmation that may be filed following conclusion of the December 31, 2003 meeting of creditors.

Counsel for creditor shall provide notice of the continued hearing to all parties in interest.

123. 03-92066-A-13 VICTORIA MCDONALD
SS #1

HEARING ON MOTION FOR
APPROVAL OF AMENDED
PROPOSED CHAPTER 13 PLAN
11/20/03 [67]

Tentative Ruling: The trustee's objection is sustained; the objection of Miller Law P.C. is sustained, and the motion to modify is denied, as set forth below.

The chapter 13 trustee has consented in his opposition to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). Neither Miller Law, P.C. within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(1). Creditor Miller Law, P.C.'s objection is likewise sustained. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(5) & (a)(6). Specifically, the plan fails to provide for the secured claim filed by creditor and when creditor's unsecured claim is included in the plan, is dramatically underfunded. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th

Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

124. 03-94166-A-13 WILLIAM & DOROTHY HODGES
RLE #1

HEARING ON OBJECTION
TO CONFIRMATION OF DEBTORS'
CHAPTER 13 PLAN AND TO THE
MOTION TO VALUE ITS
COLLATERAL FILED BY
DAIMLERCHRYSLER SERVICES
NORTH AMERICA LLC
12/3/03 [21]

Tentative Ruling: The creditor's objections are sustained, the motion to value is denied, and confirmation of the proposed plan is denied as set forth below.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly, both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f) (1) (ii) and (iii).

Secured Creditor DaimlerChrysler Services North America LLC, ("Creditor") objects to debtors' motion to value Creditor's collateral and debtors' request for confirmation of their chapter 13 plan arguing that the plan and motion undervalue the collateral.

Motion to value.

The objection is sustained and the motion is denied. Creditor has supplied no admissible evidence of value. The Kelley Blue book valuation attached to the objection relates to a different vehicle than that at issue here. The debtors have provided KBB quotes for both the trade-in value (\$9,340) and the correct private party value (\$11,485) for the subject vehicle. The court must find "replacement value," and that value does not necessarily equate to "retail blue book value." The hearsay evidence of value, in the form of valuation service quotes, suffers from the defects that it is not based on an inspection of this particular vehicle. The debtors have expressed an opinion of the value of this particular vehicle, as they can do under FRE 701 and the case law interpreting that rule, and their opinion is based on knowledge of this particular vehicle. The court will not accept the debtors' valuation if it is inconsistent with the hearsay evidence from the automobile valuation services. In this instance, the debtors' opinion evidence is inconsistent with those values.

The trade-in value is irrelevant to valuation of the subject vehicle. That valuation reflects that which debtors could expect to receive should they trade-in their vehicle to a dealership. It does not constitute debtors' replacement value. It furthermore reflects a market to which debtors have no access from the purchaser's side. The private party value provided by debtors is \$1,000 more than the value in the subject

motion. There is no reason given for the discrepancy. Therefore, the motion to value is denied.

Objection to confirmation

Because the motion to value is denied, the valuation objection is sustained and confirmation of the debtors' plan is denied. The debtors have failed to carry their burden of establishing the requirements of 11 U.S.C. § 1325(a)(5). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for Creditor shall submit an order that conforms to the court's ruling.

125.	02-93267-A-13	WALTER A. SPIVEY, SR.	HEARING ON MOTION TO
	FW #2	DIANE SPIVEY	MODIFY DEBTORS' CONFIRMED
			CHAPTER 13 PLAN
			11/24/03 [29]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

126.	03-91367-A-13	SHELLEY VINCENT	HEARING ON OBJECTION
	FW #2		TO ALLOWANCE OF CLAIM OF
			TRIAD FINANCIAL CORP.
			11/20/03 [42]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 032 on the Notice of Filed Claims, filed by Triad Financial Corp., ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was August 19, 2003, and to file a government claim was September 29, 2003. Triad Financial Corp. filed the Claim for \$12,241.81 on October 20, 2003.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

Counsel for the debtor shall submit an order that conforms to the court's ruling.

127. 03-94168-A-13 LISA MARIE RODRIGUEZ
RDG #1

HEARING ON TRUSTEE'S
OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS
12/3/03 [13]

Tentative Ruling: The trustee's objection is sustained, for the reasons stated in the chapter 13 trustee's opposition, and confirmation is denied. The motion to dismiss is conditionally denied. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

The trustee's motion to dismiss is conditionally denied. The debtor shall have until January 16, 2003 to (i) provide the trustee with copies of the worker's compensation insurance policy, file an amended plan, and set a motion to confirm the amended plan for hearing on the next available calendar that provides proper notice or (ii) convert the case to Chapter 7. If the debtor does neither of those things, the court will dismiss the case without further notice or hearing on the trustee's ex parte declaration of non-compliance.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

128. 03-91370-A-13 DON & INGE WISE
FW #3

CONT. HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
10/15/03 [36]

Tentative Ruling: This matter continued from November 18, 2003, at the request of the parties. The trustee's objections are sustained in part and overruled in part; Ford's objection is sustained, and the motion is denied.

The trustee's first and fourth objections are overruled because the objection to the claim of the Wagners is sustained below at matter 129 and the amended schedules filed November 20, 2003 appear to show sufficient disposable income to make the plan payment without the Wagners' secured claim. The trustee's remaining objections are sustained and Ford's objection is sustained. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(3) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

129. 03-91370-A-13 DON & INGE WISE
FW #4

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
MR. & MRS. GERHARD WAGNER
11/12/03 [44]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 046 on the Notice of Filed Claims, filed by Mr. & Mrs. Gerhard Wagner, ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]; however, the Claim is not properly completed where it claims a security interest but attaches insufficient proof of perfection. B.R. 3001(d). In this case the UCC-1 financing statement was recorded in Tuolumne county and not filed with the California Secretary of State. Cal. Comm. Code § 9501. Thus, the Claim does not constitute prima facie evidence of the validity and amount of the Claim. Furthermore, the debtors provided evidence that the collateral was sold pre-petition as part of the sale of debtors' business and thus did not become property of this bankruptcy estate. 11 U.S.C. § 541(a). The objection is sustained and the Claim is disallowed as a secured claim and allowed as a general unsecured claim, except to the extent already paid as a secured claim by the trustee in excess of the dividend to unsecured claims.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

130. 01-93174-A-13 SAL & DENISE CANNISTRACI
DN #3

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
STANISLAUS CREDIT CONTROL
FILED FEBRUARY 1, 2003 FOR
\$4,169.58
11/21/03 [34]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 0025 on the Notice of Filed Claims, filed by Stanislaus Credit Control, ("Claim") is resolved without oral argument.

The objection is sustained. The Claim was not timely filed. The last date to file a claim was December 26, 2001, and to file a government claim was February 6, 2002. Stanislaus Credit Control filed the Claim for \$4,169.58 on February 1, 2002.

Therefore, pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the Claim is disallowed. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v.

Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

Counsel for the debtors shall submit an order that conforms to the court's ruling.

131.	02-94575-A-13	TIMOTHY & DEBORAH	HEARING ON MOTION TO
	FW #1	CROSSFIELD	MODIFY DEBTORS' CONFIRMED
			CHAPTER 13 PLAN
			11/21/03 [48]

Tentative Ruling: The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(1), (a)(4), & (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

132.	99-94575-A-13	DANIEL KREVITSKY	HEARING ON MOTION TO
	FW #5		INCUR DEBT
			12/2/03 [75]

Tentative Ruling: The motion to incur debt is granted subject to the inclusion of the trustee's four conditions. Incurring the new debt is consistent with the debtor's performance of his confirmed plan.

Counsel for debtor shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

133.	99-94575-A-13	DANIEL KREVITSKY	HEARING ON MOTION TO
	FW #6		MODIFY DEBTOR'S CONFIRMED
			CHAPTER 13 PLAN
			12/2/03 [80]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

134. 03-93980-A-13 DONNA FLOWERDAY

HEARING ON OBJECTION
TO CONFIRMATION OF DEBTOR'S
CHAPTER 13 PLAN FILED BY
ABN AMRO MORTGAGE GROUP,
INC.
12/4/03 [19]

Disposition Without Oral Argument: The objection to confirmation is overruled as moot. The debtor has filed an amended chapter 13 plan that is set for a confirmation hearing on February 17, 2004 at 1:30 p.m. The plan to which creditor objects is no longer before the court.

Even had the objection not been moot, it would still be overruled because Creditor filed it eight days late. See G.O. 03-03 ¶3(c).

The court will issue a minute order.

135. 03-93784-A-13 HARLAN & MARY PICK
JCK #1

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
STANFORD FEDERAL CREDIT
UNION
11/13/03 [11]

Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 4 on the court's claims register, filed by Stanford Federal Credit Union, ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]; however, the Claim is not properly completed where it claims a priority interest but did not specify which subsection of §507(a) supports that classification, as directed to on the proof of claim, Box 6. Thus, the Claim does not constitute prima facie evidence of the nature of the Claim. The objection is sustained and the Claim is disallowed as a priority claim and allowed as a general unsecured claim, except to the extent already paid as a priority claim by the trustee in excess of the dividend to unsecured claims.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

136. 00-92585-A-13 ALFRED & RUFINA CASTILLO
DCJ #3

HEARING ON MOTION TO
CONFIRM MODIFIED CHAPTER 13
PLAN (DECEMBER 1, 2003)
12/3/03 [47]

Tentative Ruling: The trustee's two objections are conditionally overruled subject to the debtors providing for a plan term of 37 months and a 1.385% dividend to class 7 claims in the order confirming plan as

consented in their reply. With those additional changes, the motion is granted. In the absence of any additional written opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

137. 03-90385-A-13 MARIA T. VARGAS
JCK #1

HEARING ON OBJECTION
TO ALLOWANCE OF CLAIM OF
JOSEPH P. AND ROSALIE
GARDELLA/CURTIS & ARATA
11/18/03 [14]

Disposition Without Oral Argument: The failure of any party in interest to file timely written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 003 on the Notice of Filed Claims, filed by Curtis & Arata on behalf of Joseph and Rosalie Gardella, ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim; however, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. The creditor has failed to carry that burden. Debtor has introduced sufficient evidence that this claim is for the same debt as claim number 004 on the notice of filed claims. Claim 004 is properly filled out and has the documentation to support the secured status of the claim attached to it. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

Counsel for debtor shall submit an order that conforms to the court's ruling.

138. 03-94286-A-13 TERRI D. JOHNSON
MPD #1

HEARING ON MOTION TO
DISMISS AND OBJECTION TO
CONFIRMATION OF PLAN FILED
BY GMAC MORTGAGE CORP.
12/9/03 [17]

Tentative Ruling: Creditor GMAC Mortgage Corp.'s objections are sustained; confirmation of the proposed plan is denied, and the motion to dismiss is granted, as set forth below.

Neither the respondent within the time for opposition nor the movant within the time for reply has filed a separate statement identifying each disputed material factual issue relating to the motion. Accordingly,

both movant and respondent have consented to the resolution of the motion and all disputed material factual issues pursuant to FRCivP 43(e). LBR 9014-1(f) (1) (ii) and (iii).

The Creditor's objections are sustained. The debtor has failed to show any cause for a plan term greater than thirty six months. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a) (1). The plan is therefore not feasible as filed. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a) (6).

The debtor has also failed to introduce any evidence that the arrears amount is other than that asserted by Creditor in its objection to confirmation. The lack of a filed proof of claim is immaterial since the claims bar date is not for another two months. The only distinction is that Creditor is not entitled to the prima facie validity that a filed proof of claim provides. The plan only provides for payment of \$9,200 in arrears instead of the \$13,644.60 asserted in the objection to confirmation. The debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a) (5).

Finally, the debtor has failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a) (3). The court is required to look to the totality of the circumstances in determining good faith. Specifically, this is debtor's third consecutive bankruptcy case. The two prior cases were dismissed for failure to make plan payments. The arrearage owing to creditor has doubled over the course of these three cases. Debtor argues that movant is adequately protected by a \$75,000 equity cushion. But this does not excuse debtor's breach of at least two prior confirmed chapter 13 plans for failure to make then post-petition payments allowing the arrearage to climb. Debtor then argues that she intends to sell the subject property. But this appears for the first time in debtor's opposition to this matter. It is nowhere reflected in the proposed sixty month plan and debtor proposes no time frame within which she proposes to sell. Debtor's assertion is not credible.

Lastly, debtor argues that she has sufficient changed circumstances to justify the successive filings. She points to her brother moving in with her and his declaration stating an intent to support her. His declaration shows income over two months varying between \$2,450 and \$1,650. There is no evidence of his expenses from his self-employment. The court has insufficient information to judge whether his disposable income is sufficiently stable to make the rent payment disclosed in Schedule I. Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Based on the foregoing, the court finds that this case has been filed in bad faith and the motion to dismiss is granted. The case is dismissed with a 180 day bar to refiling.

Counsel for the Creditor shall submit an order that conforms to the court's ruling.

139. 03-91787-A-13 JOSE & JUNE RODRIGUEZ
FW #1

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
11/25/03 [19]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

140. 02-92888-A-13 CHARLES & MELISSA CALLAHAN
FW #5

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/1/03 [62]

Tentative Ruling: The trustee's objection is conditionally overruled subject to the debtors including the trustee's requested language in the order confirming plan. As further modified, the motion is granted. In the absence of any additional opposition, the court finds that the further modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

141. 03-91790-A-13 THOMAS & CHRISTINE
FW #2 MATHIESEN

HEARING ON DEBTORS'
OBJECTION TO ALLOWANCE OF
CLAIM OF DR. ROSSANA R.
CORDERO
11/18/03 [50]

Disposition Without Oral Argument: Oral argument would not benefit the court in rendering a decision on this matter. The objection is overruled as moot. The creditor amended her claim on November 4, 2003 to remove the priority status. The claim to which the debtors object is no longer before the court.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

142. 02-93692-A-13 RICHARD & CATHERINE TAYLOR
FW #2

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/1/03 [46]

Tentative Ruling: The trustee's objections are sustained, for the reasons stated in the chapter 13 trustee's opposition, and the motion is denied. The debtors have failed to carry the burden of establishing the requirements of 11 U.S.C. § 1325(a)(1) and (a)(6). Plan confirmation can be denied for failing to satisfy one or more of the prerequisites of 11 U.S.C. § 1325. In re Padilla, 213 B.R. 349, 352 (9th Cir. BAP 1997); Keith M. Lundin, Chapter 13 Bankruptcy, 3d. Ed. § 217.1 (2000 & Supp. 2002).

Counsel for the trustee shall submit an order that conforms to the court's ruling.

143. 99-93892-A-13 MAXINE BOTTLEY
FW #5

HEARING ON MOTION TO
MODIFY DEBTOR'S CONFIRMED
CHAPTER 13 PLAN
11/26/03 [94]

Tentative Ruling: The trustee's objection is conditionally overruled subject to the debtor providing for a plan term of fifty-two months in the order confirming plan. With that change, the motion is granted. In the absence of any additional opposition, the court finds that the further modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

144. 03-92493-A-13 BRIAN & LUANN NIEVE
FW #1

HEARING ON MOTION TO
MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/1/03 [30]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

145. 03-93395-A-13 ERNEST GARCIA
FW #2

HEARING ON MOTION TO
VALUE COLLATERAL OF THE
FRANCHISE TAX BOARD
12/3/03 [29]

CASE DISMISSED EOD 12/10/03

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on December 10, 2003.

The court will issue a minute order.

146. 03-93395-A-13 ERNEST GARCIA
FW #3
ERNEST GARCIA VS.
RICHARD & JANE CALVIN, DBA
RECOVER & DISCOVER CO., FOR
ROY P. CALPI, DC

HEARING ON MOTION TO
AVOID LIEN ON DEBTOR'S
RESIDENCE
12/3/03 [33]

CASE DISMISSED EOD 12/10/03

Disposition Without Oral Argument: The motion is denied as moot because the case was dismissed on December 10, 2003.

The court will issue a minute order.

147. 99-93095-A-13 JAMES H. JONES, JR. &
JCK #4 KATHERINE JONES

HEARING ON THIRD MOTION
TO MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
12/2/03 [41]

Disposition Without Oral Argument: No written opposition to this matter was filed, so it is therefore suitable for disposition without hearing. The motion is granted. In the absence of opposition, the court finds that the modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtors shall submit an order that conforms to the court's ruling which has been approved by the trustee. The order shall include a specific reference to the filing date of the modified plan.

148. 99-93095-A-13 JAMES H. JONES, JR. &
JCK #5 KATHERINE JONES

HEARING ON MOTION TO
INCUR INDEBTEDNESS FOR THE
REFINANCE OF REAL PROPERTY
12/2/03 [45]

Tentative Ruling: The motion to incur debt is granted subject to the inclusion of the trustee's four (4) conditions. Incurring the new debt is consistent with the debtors' performance of the plan confirmed at matter 147.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

149.	03-91098-A-13 GINO & GABRIELA MERCADO FW #1	HEARING ON MOTION TO SELL REAL PROPERTY 12/1/03 [21]
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Tentative Ruling: The motion to incur debt is granted subject to the inclusion of the trustee's four conditions. Incurring the new debt is consistent with the debtors' performance of their confirmed plan.

Counsel for debtors shall submit an order that conforms to the court's ruling and that has been approved by the trustee.

150.	03-91099-A-13 GORDON & PATRICIA NEYENS FW #1	HEARING ON OBJECTION TO ALLOWANCE OF CLAIM OF VALLEY FIRST CREDIT UNION 11/20/03 [26]
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Disposition Without Oral Argument: The failure of a creditor to file written opposition as required by this local rule is considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 3007-1(d)(1). Therefore, the objection to claim No. 024 on the Notice of Filed Claims, filed by Valley First Credit Union, ("Claim") is resolved without oral argument.

The objection is sustained. The debtors question the validity and nature of this claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim [B.R. 3001(f)]; however, the Claim is not properly completed where it claims a security interest but attaches no security documents or proof of perfection. B.R. 3001(c) and (d). Thus, the Claim does not constitute prima facie evidence of the validity and amount of the Claim. The objection is sustained and the Claim is disallowed as a secured claim and allowed as a general unsecured claim, except to the extent already paid as a secured claim by the trustee in excess of the dividend to unsecured claims.

Counsel for the debtors shall submit an order that conforms to the court's ruling.

151.	02-90823-A-13 SERGIO & CLARISA CAMPOS EE #2 BENEFICIAL CALIFORNIA, INC. VS.	HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY 12/19/03 [28]
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Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

152. 03-91443-A-13 BRIAN A. HAGGSTROM
KBR #1
MATRIX FINANCIAL SERVICES
CORP. AND FEDERAL NATIONAL
MORTGAGE ASSOCIATION VS.

HEARING ON MOTION FOR
RELIEF FROM AUTOMATIC STAY
AND LEAVE TO EXERCISE POWER
OF SALE IN DEED OF TRUST TO
REAL PROPERTY AND FOR
ATTORNEY FEES
12/22/03 [38]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

153. 03-93866-A-13 JOSEPH ROMO
FW #1

HEARING ON MOTION TO
INCUR DEBT
12/22/03 [12]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.